IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Contempt Petition No. 19 of 2007
with
Contempt Petition No. 20 of 2007
in
Suit No. 1989 of 1999

Mrs.Jyoti P. Gandhi ..Petitioner

vs.

1. Smt.Savitri M.Sanghvi and ors ..Respondants

Petitioner in person.
Respondent nos. 2 and 3 present in person.

CORAM: S.C.DHARMADHIKARI J
1st October,2007

P.C.

1. These two contempt petitions are by the same petitioner against the same respondents and, therefore, are disposed of by common order, more so, when common submissions have also been advanced by the petitioner.

2. The contempt petition no.19 of 2007 is alleging wilful breach and violation of order dated 14th August, 2003. Under this order, according to the petitioner, respondents were restrained from acting in furtherance of warrant of attachment dated 11th July, 2003.

3, The contempt petition no.20 of 2007 alleges that respondent nos. 1 to 4 to the said contempt petition have committed breach and violation of order dated 24th November, 2003. The said order reads as under:-

" Heard.

2. The perusal of the impugned order dated July 28, 2003 shocked us the way the Court Receiver and the officials of the office of the Court Receiver acted in dispossessing the appellant from the premises over which the Court Receiver was never appointed. This is indeed very serious lapse on the part of the Court Receiver and the officials of the Court Receiver. This aspect has been considered by the learned single Judge in the impugned order and, accordingly, the learned Single Judge granted prayer (a) of chamber summons. However, the learned Single Judge observed in the impugned order that if the decree holder wishes to execute the decree by taking possession of the suit flat, she will give at least three days clear notice to the appellant-applicant who would be heard before any orders are passed

inrespect of the suit flat. We may observe that in respect of the suit flat, we may observe that in respect of the suit flat, the appellant has obstructed the execution of the decree. Obviously, in that event the decree holder shall have to follow the procedure provided under Order 21 Rule 97 of the Code of civil Procedure raising her grievance about obstruction to the possession of flat in question at the instance of the appellant. Obviously, upon such application being made by the decree holder under Order 21 Rule 97 C.P.C. the matter shall be proceeded with in accordance with law.

3. We accordingly dispose of appeal by observing that since the appellant-applicant has put obstruction to the execution of the decree in respect of flat no.21, Gautam View, 5th floor, Seven Bungalows, Andheri (W), Mumbai, the decree holder is required to prosecute the procedure provided under Order 21 Rule 97 of C.P.C.

4. With the aforesaid observations, appeal is disposed. No costs.

Certified copy expedited."

4. Earlier order of 24th August, 2003 passed by A.M.Khanwilkar J. in Notice of Motion no.2272 of 2003 merely states as under:

> "1. This matter has been placed before me for directions. It is brought to my notice that I have passed Judge's order on 23rd April, 2003. That was passed due to inadvertence. In fact, I had occasion to appear for the Defendant in one of the matters before the Apex Court. In fairness, the parties ought to have brought that fact to my notice when the matter was moved for Judge's order on 23rd April, 2003,but without disclosing that fact, the order was obtained. In the circumstances, the appropriate course, to my mind, is to recall the order dated 23rd April, 2003 and relegate the parties to the position as obtained, prior to passing of that order.
>
> 2. Office is directed to ensure that any matter pertaining to the defendant herein, shall not be placed before me, in future.

> 3. It will be open to the parties to approach the appropriate Court for necessary reliefs, if so advised."

5. I have perused the contempt petition and the written submissions of the petitioner who is appearing in person. I have also perused the reply filed on behalf of the concerned respondents.

6. Having given my anxious consideration to the written submission and the material produced, I am of the view that no case for contempt is made out and the contempt petitions deserve to be dismissed. The reasons in brief are as under:

7. The chequered history of the litigation need not be gone into. All that can be observed is that the petitioner had faced certain proceedings which are in the nature of execution, according to her, and which are in pursuance of the decree passed against her husband with whom she is estranged. She submits that in pursuance of the decree and execution proceedings, the Court Receiver has dispossessed her wrongfully and without due process of law.

8. A perusal of the order passed on 14th August, 2003 passed by this Court shows that all that this Court observed is that the learned Judge (A.M.Khanwilkarl J.) had earlier passed an order in the proceedings without noticing the aspect that he had represented one of the parties as an Advocate in the Supreme Court. Therefore, expressing his displeasure he recalled his earlier order and directed that none of the matters pertaining to the parties be placed before him. I do not see how any contempt can be committed of this order in as much as it is not disputed before me that thereafter the matters were not placed before A.M.Khanwilkar J. Similarly his earlier order was recalled by him. In such circumstances, alleging fraud upon the respondents the contempt petition no.19 of 2007 has been filed. That is something between the parties. The Court may have expressed its displeasure in the manner the proceedings were prosecuted but that by itself does not give any cause to allege contempt. The order passed on 24th August, 2003 does not result in any judgment, decree, direction, order, writ or other process as is contemplated within the definition of "civil contempt" under sec.2(b) of the Contempt of Courts Act, 1971. In this view of the matter, the contempt petition is misconceived.

More so, when it is not alleged that after the said order was passed the parties acted in a manner as would amount to wilful disobedience of directions issued therein. The contempt petition no.19 of 2007 is, therefore, dismissed.

9. In so far as contempt petition no.20 of 2007 is concerned, the Division Bench has disposed off the appeal. The Division Bench has not found any error or infirmity in the order dated 20th July, 2003 which directed that the petitioner/appellant be put back in possession of the premises. The Division Bench has observed that since the petitioner/appellant had obstructed the execution of the decree, the decree holder was required to follow procedure provided under Order 21 Rule 97 of the Code of Civil Procedure.

10. The grievance of the petitioner in Contempt Petition No.20 of 2007 is that this Court having directed that the petitioner must be proceeded with under Order 21 Rule 97, in execution of the subject decree, respondent nos.1 to 3 could not pursue their application for attachment. Having not challenged the order passed the respondents could not have proceeded under Order 21 Rule 54 of the C.P. C. and by so proceeding they have

overstepped the Court’s order.

11. It is to be noted in this behalf that the petitioner has objected to the attachment and proceedings in that behalf are pending. The petitioner’s grievance that the attachment could not have been levied is the subject matter of substantive proceedings wherein both sides would get opportunity to putforward their case. I am informed by the respondents that the petitioner is still in possession of the subject flat/immovable property and all that has happened is that the warrant of attachment has been subject matter of challenge in a chamber summons which is pending. A Commissioner is appointed to record evidence and in such circumstances, in my view, if the petitioner wishes to urge that the course adopted by the respondents is impermissible in law, that argument is still open for her to be canvassed at appropriate stage in the pending proceedings. Alleging contempt is not her remedy. The parties may have misread the order or interpreted it erroneously. Merely because that is the grievance does not mean that the petitioner must resort to contempt jurisdiction. She has other remedies which she has already availed of. Once again the contempt proceedings appear to be misconceived and

ill advised.

12. The petitioner is a lady and appearing in person. I had given enough opportunity to argue the matters but she stated that she would be placing written submissions on record and as noted in my earlier order no oral arguments would be canvassed in Court. She is present in Court and in her presence the present order is passed. It appears that she has a grievance about the ill treatment at the hands of the execution machinery. All such aspects can be high lighted by her in substantive proceedings. The contempt petition is devoid of any merit and is accordingly dismissed.

(S.C.DHARMADHIKARI J.)